

NOT FOR PUBLICATION

FEB 15 2008

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFONSINA MESA SOSA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-73982

Agency No. A79-537-288

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted February 11, 2008 **

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA") order denying petitioner Alfonsina Mesa Sosa's motion to reopen.

The BIA's denial of a motion to reopen is reviewed for abuse of discretion. *See Cano-Merida v. INS*, 311 F.3d 960, 964 (9th Cir. 2002). The regulations state

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

that a motion to reopen removal proceedings must be filed not later than ninety days after the date on which the final order of removal was entered. *See* 8 C.F.R. § 1003.2(c)(2).

A review of the administrative record demonstrates that petitioner filed her motion to reopen on June 25, 2007, more than ninety days after March 13, 2006, the date on which the final order of removal was entered. Accordingly, respondent's motion for summary disposition in part is granted because the questions raised by this petition for review as to the BIA's denial of the motion as untimely are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

To the extent petitioner seeks review of the BIA's denial of her motion to reopen because she failed to demonstrate that reopening was warranted, this court lacks jurisdiction to review that portion of the BIA's decision. *See* 8 U.S.C. § 1252(a)(2)(B)(i); *Fernandez v. Gonzales*, 439 F.3d 592, 601 (9th Cir. 2006) (concluding that the court lacks jurisdiction to review the Board of Immigration Appeals' denial of motion to reopen for failure to establish a prima facie case if a prior adverse discretionary decision was made by the agency). Accordingly, respondent's motion to dismiss for lack of jurisdiction in part is granted.

The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

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All other pending motions are denied as moot.

DENIED in part; DISMISSED in part.